

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
WESTERN DIVISION

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United States of America ex rel.	)	
FREDERICK RICKY LAMBERT,	)	
	)	
Petitioner,	)	
	)	
v.	)	No. 08 C 50059
	)	
LEE RYKER, Warden,	)	
Lawrence Correctional Center,	)	The Honorable
	)	Frederick J. Kapala,
Respondent.	)	Judge Presiding.

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**MOTION TO RECONSIDER**

Respondent LEE RYKER moves this Court to reconsider its April 30, 2008 order staying the instant habeas corpus proceedings. Doc. 13. In support, respondent states as follows:

1. Petitioner Frederick Ricky Lambert is incarcerated at the Lawrence Correctional Center, in Sumner, Illinois, where he is in the custody of that facility's warden, Lee Ryker.

2. Following a jury trial in the Circuit Court of Winnebago County, Illinois, petitioner was convicted of first degree murder and sentenced to 60 years' incarceration. Pet. at 4-5.

3. On August 17, 2007, petitioner signed his § 2254 petition, which he initially filed in the United States District Court for the Southern District of

Illinois. *See* Doc. 1. At that time, petitioner also filed a motion to stay proceedings on his habeas petition. *See* Doc. 3.

4. On March 31, 2008, Judge Reagan ordered the petition transferred to the Northern District of Illinois, Western Division. Doc. 8.

5. On April 14, 2008, petitioner renewed his motion to stay in the Northern District of Illinois. Doc. 10.

6. On April 30, 2008, this Court granted petitioner's motion to stay. Doc. 13. The Court's minute entry provides:

The Court grants petitioner's motion to stay the current habeas proceedings pending resolution of his state post-conviction proceedings with respect to several of petitioner's claims. *See Arrieta v. Battaglia*, 461 F.3d 861, 866 (7th Cir. 2006); *Dolis v. Chambers*, 454 F.3d 721, 725 (7th Cir. 2006). To proceed with the current petition, petitioner must notify the Court when his state court proceedings are no longer pending and request that Court lift the stay.

Doc. 13.

### **ARGUMENT**

This Court should amend its order granting petitioner's motion for a stay to provide that petitioner must notify the Court within thirty days of the conclusion of state postconviction proceedings that he wishes to lift the stay and proceed on his § 2254 petition.

A district court has discretion to stay a mixed habeas petition to allow the petitioner to exhaust his claims in state court and then return to federal court for review of his petition. *Rhines v. Weber*, 544 U.S. 269, 276 (2005). But the Court's discretion in structuring the stay is "limited by the timeliness concerns reflected in AEDPA." *Id.* at 277. A mixed petition should not be stayed indefinitely; rather, the district court should place reasonable time limits on a petitioner's trip to state court and back. *Id.* at 277-78. *Rhines* cited favorably the Second Circuit's decision in *Zarvela v. Artuz*, 254 F.3d 374 (2d Cir. 2001), which explicitly conditioned the stay on the prisoner's returning to federal court within a brief interval, normally 30 days after state court exhaustion is completed. *Rhines*, 544 U.S. at 278. Thus, this Court's April 30, 2008 order runs afoul of *Rhines* by staying the habeas proceedings indefinitely, and should be amended to conform with *Rhines*.

## CONCLUSION

This Court should amend its April 30, 2008 order (Doc. 13) to condition the stay on petitioner's returning to federal court within 30 days of exhaustion of his state postconviction remedies.

May 6, 2008

Respectfully submitted,

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### **CERTIFICATE OF SERVICE**

I hereby certify that on May 6, 2008, I electronically filed the attached MOTION TO RECONSIDER with the Clerk of Court using the CM/ECF system, and I hereby certify that on May 6, 2008, I mailed the document by United States Postal Service to:

Frederick R. Lambert, #N30421  
Lawrence Correctional Center  
Rural Route 2  
Box 31  
Sumner, Illinois 62466

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